

Town of Weston Planning Commission

Minutes of Hearing June 7, 2022

Present: Deborah Granquist (Acting Chair), Anne Fujii, Laura Katz, Jeff Lennox, Tom Foster

Public: Will Goodwin, Zoning Administrator (ZA)

Chris Lindgren, Applicant

Arthur Krueger, Project Engineer

Jeff White, Project Attorney

Jessica Rizio, Weston Town Engineer

The meeting was held at the Weston Town Office with Ms. Granquist, Ms. Katz, Mr. Krueger, Mr. White and Ms. Rizio attending remotely on Zoom. The meeting was recorded.

Hearing: Chris Lindgren Subdivision Final Plat Review

Deborah Granquist, Acting Chair, called the hearing to order at 5:07 PM and waived the reading of public notice. She explained the procedure that brought this group of Planning Commission members together for this hearing. The Planning Commission members present are a “subset” of the full Planning Commission, and were appointed by the Selectboard for the sole purpose of hearing the Lindgren subdivision through to its decision. She listed the following documents provided by the Zoning Administrator for this hearing, confirming with the Zoning Administrator that there were no other documents:

1. Wastewater system and potable Water supply permit WW-2-5812 dated April 24, 2019
2. Application for major subdivision signed Chris Lindgren dated 12/122/20
3. PC decision on Preliminary Plat dated May 3, 2021
4. Minutes of Public hearing on Lindgren Preliminary Plat application dated March 18, 2021 and reopened April 5, 2021
5. Email from Kathleen Bower, abutter, dated April 5, 2021
6. Planning Commission minutes from May 3, 2021
7. Lindgren subdivision proposed deed language
8. Undated letter from Chris Lindgren outlining chronological timeline of Preliminary Plat
9. Drawings prepared for the Christopher Lindgren Subdivision Final Plat, certified by Krueger Engineering:
 - i. Driveway Details dated 12/18/21
 - ii. Road Sections Temporary Erosion Control dated 12/18/21
 - iii. Road Plan & Profile dated 12/18/21
 - iv. Subdivision Final Plat dated __/02/22
 - v. Level Spreaders Detail & Sizing dated 12/18/21
 - vi. Subdivision Final Plat Stormwater Plan dated 6/10/21

Ms. Granquist confirmed with the Zoning Administrator that the hearing notice had been posted as required and that all abutters had been properly notified. There were no disclosures of conflicts of interest or *ex parte* communications. Ms. Granquist administered the oath of evidence to all participants planning to be heard (Mr. Lindgren, his project representatives and the Town Engineer).¹

Ms. Granquist then asked Mr. Lindgren to begin by explaining the details and salient points of the proposed subdivision, and then discussing compliance with the Weston Subdivision Regulations. Ms. Granquist said that, after Mr. Lindgren’s overview, and time permitting, the Planning Commission would consider the May 8, 2021 Planning Commission decision

¹ It was later discovered that Mr. Krueger had not taken the Oath. He said he would not take an “oath” but instead agreed that he would “affirm” that the evidence he gives in this case shall be the whole truth and nothing but the truth under penalties of perjury.

regarding Preliminary Plat, and then ultimately move onto Final Plat review. She said she expected that Mr. Lindgren would address each of the applicable sections of the Weston Subdivision Regulations, explaining in sufficient detail how the project complies with the Regulations, and where it does not comply, what waivers Mr. Lindgren is requesting and any further necessary steps. She also said that the Planning Commission would need a list of all requested waivers, and mentioned that both the Town Attorney and Town Engineer would be consulted and that the question of a performance bond would be addressed.

Mr. Lindgren began his testimony by explaining the proposed subdivision. He testified that the proposal is to subdivide a 15 acre parcel which he acquired about 10 years ago into six lots, each suitable for a single family dwelling. Mr. Lindgren intends to sell lots to prospective buyers. He will not be constructing any dwellings. Mr. Lindgren said that he might reserve lot #4 for himself.

He further explained that the subdivision is accessed by an Existing Unnamed Roadway that enters lands currently owned by Mr. Lindgren. These lands are outside the actual boundaries of the proposed subdivision.² Lots #2, 3, 4, 5 and 6 will use the Existing Unnamed Roadway to access their lots and each lot owner will be granted an easement to travel over this Existing Unnamed Roadway. The construction of the Existing Unnamed Roadway to State standards (A-76) will be the responsibility of Mr. Lindgren.³ There is no timetable for when this upgrade will be accomplished.

According to Mr. Lindgren, there are no roads within the subdivision boundaries, only driveways. Instead the lots are accessed as follows:

1. Lot #1 has its own direct access from Route 100, which needs an access permit from the State of Vermont.
2. Lots 2 and 3 are accessed by a “driveway” (approximately 600-700’ in length) to be built by the new owners of these lots at their expense and in accordance with the Driveway Details Plan dated 12/18/21. The Lot #2/3 driveway comes off an extension of the lower portion of the Existing Unnamed Roadway.⁴
3. Lots 5 and 6 are accessed by an existing “work road” which according to the Plans needs to be “improved as needed.” The “work road” comes off an extension of the upper portion of the Existing Unnamed Roadway, which is on Mr. Lindgren’s property outside the boundaries of the subdivision. At the end of the “work road” a “driveway” extension needs to be built to provide actual access to Lots 5 and 6.⁵ All work on improving the “work road” and constructing the lot 5/6 driveway extension (approximately 1,000’ in total length), including ongoing maintenance, are the responsibility of the new owners of lots #5 and 6 at their expense and in accordance with the Driveway Details Plan dated 12/18/21.⁶
4. Lot #4 is accessed by a personal driveway coming off the Existing Unnamed Roadway. Such personal driveway is to be constructed by the new owners of Lot 4 at their expense and in accordance with the Driveway Details Plan dated 12/18/21.⁷
5. The proposed new driveways that access Lots 2 and 3 and lots 5 and 6 will be owned by the underlying landowners who will grant easements to the other lot owners who use the driveway to ensure maintenance, etc. All maintenance, repair, snow plowing etc. will be the joint responsibility of the two owners whose lots are accessed by a specific driveway. Such responsibility will be reflected in the deed restrictions, along with the obligation to build the respective access driveways as well as the personal driveways to each lot.

² It is not clear to the writer of these minutes whether the Existing Unnamed Roadway is part of the proposed subdivision, including for purposes of calculating whether the subdivision qualifies for a stormwater permit exemption.

³ It is not clear to the writer whether the Existing Unnamed Roadway has actually been brought up to A-76 standards. Nor is it clear how much of the Existing Unnamed Roadway upgrade is the responsibility of the Applicant and who has ultimate responsibility for maintenance, plowing, etc.

⁴ It is not clear to the writer whether the owners of Lots 2 and 3 have responsibility for building the “driveway” from the Existing Unnamed Roadway or from the boundary of Lot 2 within the subdivision.

⁵ Driveways, unlike roads, are not regulated under the Weston Zoning Regulations. The only requirement for a driveway is that it may access no more than two lots. The question arose about whether the “driveway” accessing Lots 5 and 6 fails this test since the Applicant testified that he intends on occasion to use the driveway to access his “sugar lot” on the other side of the northern boundary of the subdivision.

⁶ It is not clear to the writer whether the owners of Lots 5 and 6 have responsibility for improving the “work road” from the Existing Unnamed Roadway or from the boundary of Lot 6 within the subdivision.

⁷ The writer assumes that the personal driveway commences at the edge of the lot 4 property, although this is not clear.

6. Mr. Lindgren testified further that the new driveways will be no more than 10-12' in width (which is a requirement of the Stormwater Plan).⁸ The question arose as to whether the Weston Fire Department has signed off on this. There was concern that a 12' wide driveway servicing two lots might not accommodate two emergency vehicles passing. Mr. Lindgren has not yet reviewed this issue with the Fire Department.
7. In addition to the driveways described above, Mr. Lindgren testified that all lot owners will be responsible for building their own "personal driveways." Such personal driveways must be "permeable" and must be constructed in accordance with the Driveway Details Plan dated 12/18/21, which calls for using Geo-pave mats. The permeable requirement will be included in the deed restrictions. If a personal driveway is constructed in such a manner that it is not permeable, it is likely that the stormwater exemption will not be met. There was discussion about the use of such mats and the observation was made that they are difficult to snowplow over. Mr. Lindgren conceded that they are but that a good plow person would be able to handle this if adequately informed of the issues.
8. A question was asked of Mr. Lindgren -- if the owner of lot #6 builds the entire length of the 'work road" and the "driveway extension" to his lot, can the owner get reimbursement from the owner of lot #5? The answer was yes, but it will be up to the owner of lot #6 to demand and receive any reimbursement from the owner of lot #5. There will not be a Homeowners' Association. All restrictions and obligations will be part of deed restrictions. Mr. Lindgren testified that since there will not be a Homeowners Association, enforcement of all deed descriptions will fall on the other lot owners.
9. There was a question about the long roundabout driveway to Lots #5 and 6. Mr. Lindgren explained that the land is very steep at this point and this was the best way to deal with the steepness. Ms. Granquist reminded Mr. Lindgren that all driveways (personal and shared) cannot exceed a 10% grade. This should be included in the deed restrictions.

Mr. Lindgren testified that the project has received a Wastewater permit (2018) to construct a community septic system for lots # 1,3,4 5 and 6 with lot #2 having its own in ground system. There were questions about the existing permit since it was for 7 lots. Mr. Lindgren testified that he will get an Amendment from the State. Mr. Lindgren will construct the community system.⁹ A portion of the community system will be gravity fed and there will be pumps for the lots with grade levels below the system. Mr. Lindgren explained that the site of the community system was chosen because of an abundance of gravel. All of the homeowners using the community system will be responsible for maintenance and repair but each lot will be responsible for any issues incurred on their respective property and mutual easements will be granted to all of the community septic system users. This will all be accomplished by deed restrictions.

Mr. Lindgren then addressed stormwater and drainage issues, which had been of particular concern to abutters in the Preliminary Plat hearings. Mr. Lindgren explained that they are not required to get a stormwater permit because they have less than 1 acre of impervious surfaces within the subdivision as shown on Subdivision Final Plat Stormwater Plan dated 6/10/21.¹⁰ The Stormwater Plan shows a total of 0.909 acres of impervious surfaces, which are comprised of 6 homes at 2,000 SF each, 554 lin ft road X 22, cul de sac of 2764 sf, and existing work road/driveway 1054 lin ft. Roadside ditches and [personal] driveways to be built with Geo-pave mats which are calculated as not impermeable. Thus, if the personal driveways do not use this material, they may cause the Stormwater permit exemption to fail. There was discussion about what happens if an owner builds a house bigger than 2,000 SF or if a personal driveway is built out of impermeable materials. The response was that the project may then exceed the 1 acre limitation and would need a stormwater permit. There would be a deed restriction that the owner must comply with the Stormwater Plan and if not, it would be the responsibility of the homeowner who breached the deed restriction to apply for a storm water permit. Mr. Lindgren requested that the deed restriction be written not to limit the size of the house to 2,000 SF but that if it exceeded 2,000 SF, bringing the impermeable surfaces to greater than 1 acre, that homeowner would be responsible for obtaining a stormwater permit.

From Section 210

⁸ If any of the driveways exceed 12' in width, are not installed with permeable materials as shown on the plans, or if the "work road" driveway exceeds 12' in width, the 1 acre exemption from a Storm water permit requirement might fail.

⁹ It is not clear to the writer who has responsibility for the installation of the septic system on Lot #2.

¹⁰ It is not clear to the writer whether the Existing Unnamed Roadway is part of the proposed subdivision and is thus part of the calculation of permeable v. impervious surfaces.

Ms. Granquist noted the Section 210 items that were incomplete according to the Planning Commission decision dated May 8, 2021:

- 210 (2) Names and addresses of subdivider and professional advisors are on the Preliminary Plat; professional seals will be included on the Final Plat. Mr. Lindgren said that the seals will be on the Final Plat.
- 210 (5) The survey is not yet complete.
- 210 (5) Mr. Lindgren testified that all proposed new easements and covenants are shown on the Final Plat.
- 210 (8) Mr. Lindgren testified that it will be up to all of the new lot owners to put in their own utilities. He will seek a waiver from inclusion on the final plat.
- 210 (9) Mr. Lindgren testified that he will seek a waiver from showing existing systems of drainage on the lots. Mr. Lindgren will confirm which parties are responsible for installing all improvements.
- 210 (10) Mr. Lindgren explained that the lot that is less than 2 acres is allowed under the Weston Zoning Regulations in the RR zoning district, since all the adjacent lots are at least 2 acres.

From Section 241

Ms. Granquist noted the Section 241 items that were incomplete according to the Planning Commission decision dated May 8, 2021:

- 241 (2) Final certification of internal boundaries will appear on the final survey.
- 241 (6) Mr. Lindgren testified that he will seek a waiver from having to set aside public lands in the subdivision.
- 241 (7) Mr. Lindgren testified that boundaries of easements will be included in the deed restrictions.
- 241 (10)

Fire Protection. Mr. Lindgren has spoken to the Weston Fire Department who has requested that each house in the subdivision have an electronically connected alarm system. This requirement will be included in the deed restrictions. He testified that the Fire Department said that the subdivision does not need a fire pond or hydrant. Mr. Lindgren will obtain a letter from the Fire Department confirming this. There was concern expressed that 10-12' wide driveways to the lots would not be sufficient or safe for fire or other emergency vehicles. Mr. Lindgren will discuss this and confirm in writing with the Fire Department.

Stormwater drainage. There was much concern expressed for the ability of the lot owners to continue to comply with the 1 acre exemption (including house size and requirement that personal driveways be permeable), and how this should be handled. Mr. Lindgren will provide deed restrictions to deal with these issues.

Sidewalks. Mr. Lindgren will ask for a waiver for sidewalks.

From Section 250 Subdivision Final Plat Approval Procedure requirements

1. The drawings shall
 - a. Be accompanied by construction detail drawings. Mr. Lindgren testified that he has included the construction detail drawings for the stormwater plan, the roadway and the driveways.
 - b. Be endorsed by Agency of Natural Resources. Mr. Lindgren testified that the project complies with this Section by virtue of receiving a wastewater permit.
 - c. Include offers of cession to streets and public areas. Mr. Lindgren testified that there will be no cessions.
 - d. Include other information which the Planning Commission may request
2. Public hearing to be held within 30 days after the official submission date. Done.
3. The subdivider shall attend hearings. Mr. Lindgren will attend all hearings.
4. The Final Plat shall conform to the approved Preliminary Plat, plus any recommendations made by the PC. Mr. Lindgren testified that the Final Plat will meet this requirement.
5. The Planning Commission may permit the Final Plat to be divided into parts... to assure orderly development
 - a. Either: the TOWN ENGINEER must file a certificate stating that all required improvements constructed by the subdivider have been designed and inspected and meet standards in these regulations and are as required by law. This section was discussed. Mr. Lindgren will seek a waiver for this section.
 - b. OR: A performance bond must be submitted and approved by the PC and the TOWN ATTORNEY as to forms sufficient, manner of execution and surety, for completion of required improvements This section was discussed. Mr. Lindgren will seek a waiver for this section.

6. Offers of cession, in form certified as satisfactory by the TOWN ATTORNEY, of all land to be dedicated for streets, easements, open space and other facilities. Mr. Lindgren testified that this will be covered in the deed restrictions.
7. A certified check in the amount of one percent of the required improvements cost, as determined by the TOWN ENGINEER to meet the costs of inspections. This was not discussed yet.
8. Drawings, certified by a land surveyor, showing the location of all required improvements that may have been constructed prior to Final Plat submission.¹¹

From Section 251 Final plat data

The following information shall be submitted with Final Plat:

1. Information required on Preliminary Plat updated and accurate. This still needs to be addressed.
2. Sufficient data to determine readily the location, bearing and length of all street, lot and boundary lines, referenced to established monuments. This still needs to be addressed.
3. Location, dimensions and names of all sites for residential, commercial, industrial, public, non-public, dedicated and reserved uses. This is not applicable.
4. Location, material and size of monuments. Mr. Lindgren testified that he will request a waiver to use iron pipe rebar.

From Section 257 Information required on construction detail drawings

The final plat shall be accompanied by construction detail drawings; plans and profiles showing location, size and invert elevations of existing and proposed sanitary sewers, storm water drains, and fire hydrants, and location and size of water gas, electricity and any other utilities or structures.. ALL PLANS SHALL BE SUBJECT TO APPROVAL OF THE TOWN ENGINEER. The Planning Commission will have the Town Engineer review all drawings.

From Section 260 Legal data

The subdivider shall submit the following data to the Planning Commission before any Final Plat can be approved; before acceptance, the TOWN ATTORNEY shall certify as to their legal sufficiency

1. Deed description and map or survey of tract boundary made and certified by a licensed land survey, tied into established boundary monuments. Mr. Lindgren will supply.
2. Offers of cession dedicating streets, rights of way, and sites for public use. Mr. Lindgren testified that there will be no offers of cession.
3. Copies of agreements showing the manner in which areas reserved by the subdivider are to be maintained. There was discussion on this section. Mr. Lindgren believes that he as the subdivider is not reserving any such areas.¹²
4. Draft protective covenants whereby the subdivider proposes to regulate land use in the subdivision and otherwise protect the proposed development. Mr. Lindgren testified that there will be no protective covenants. All such land use regulation in the subdivision will be covered by deed restrictions, some of which have been already drafted by the Applicant's attorney, but more are expected to be submitted. All will be reviewed by the Town attorney.
5. Any other data as may be required by the Planning Commission in enforcement of these Regulations.

From Section 261 Performance Bond – Mr. Lindgren testified that he will seek a waiver from this Section.

1. Where a performance bond is required by the Planning Commission, the subdivider shall file with the Town a bond in an amount sufficient to provide for, and secure to the public the full cost of completion of all streets, other required improvements, and their maintenance for a period of two years.
2. The Planning Commission shall specify the time period within which the required improvements must be completed, but in no case for a longer term than 3 years. The time period shall be expressed in the bond.
3. If the required improvements have not been installed or maintained as provided within the term of such bond, it shall be forfeited and the Town shall install or maintain such improvements.

¹¹ The writer is not clear if this has been resolved.

¹² The writer is not clear whether the Existing Unnamed Road qualifies as an area reserved by the subdivider.

From Section 262 Offers of Cession and Release

Mr. Lindgren testified that there will be no offers of cession and release.

From Section 265 Inspection of Required improvements – The Planning Commission will have the Town engineer inspect required improvements.

1. The TOWN ENGINEER shall inspect all required improvements prior to the acceptance to ascertain whether they have been complete satisfactorily.
2. The subdivider shall inform the TOWN ENGINEER at least 48 hours before such inspection is required and shall not cover any part of an improvement until the Engineer's approval has been granted.
3. Drawings showing the location of all required improvements as build shall be certified by an engineer or land surveyor and filed with the Planning Commission prior to acceptance of the improvements. Until as-built plans have been filed, no performance bond guaranteeing the completion of the improvements shall be released.

Ms. Granquist noted that there were a few more sections in Article II to review and all of Article III needs to be reviewed. Given the time, she asked for a motion to recess the hearing to a specific date. A motion was made by Tom Foster and seconded by Ann Fujii to recess the hearing until July 5, 2022 at 5 pm. The motion was passed unanimously.

Minutes taken by

Deborah Granquist